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CRIMINAL LAW ISSUES

TEXAS v. COBB, No. 99-1702, ___ U.S. ___, ___ S.Ct.____, ____U. S. L.W.____ (Apr. 2, 2001).

REHNQUIST, Chief Justice, delivered the opinion of the Court.

The Texas Court of Criminal Appeals held that a criminal defendant's Sixth Amendment right to counsel attaches not only to the offense with which he is charged, but to other offenses "closely related factually" to the charged offense. We hold that our decision in McNeil v. Wisconsin, 501 U.S. 171, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991), meant what it said, and that the Sixth Amendment right is "offense specific." . . .

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence." In McNeil v. Wisconsin, 501 U.S. 171, 1 11 S.Ct. 2204, 115 L.Ed.2d 158 (1991), we explained when this right arises: "The Sixth Amendment right [to counsel] ... is offense specific. It cannot be invoked once for all future prosecutions, for it does not attach until a prosecution is commenced, that is, at or after the initiation of adversary judicial criminal proceedings--whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." Id., at 175 (citations and internal quotation marks omitted).

Accordingly, we held that a defendant's statements regarding offenses for which he had not been charged were admissible notwithstanding the attachment of his Sixth Amendment right to counsel on other charged offenses. See id., at 176.

Some state courts and Federal Courts of Appeals, however, have read into McNeil 's offense-specific definition an exception for crimes that are "factually related" to a charged offense. Several of these courts have interpreted Brewer v. Williams, 430 U.S. 387, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977), and Maine v. Moulton, 474 U.S. 159, 106 S.Ct. 477, 88 L.Ed.2d 481 (1985)--both of which were decided well before McNeil--to support this view, which respondent now invites us to approve. We decline to do so.

. . . .

Although it is clear that the Sixth Amendment right to counsel attaches only to charged offenses, we have recognized in other contexts that the definition of an "offense" is not necessarily limited to the four corners of a charging instrument. In Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932), we explained that "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." Id., at 304. We have since applied the Blockburger test to delineate the scope of the Fifth Amendment's Double Jeopardy Clause, which prevents multiple or successive prosecutions for the "same offence." See, e.g., Brown v. Ohio, 432 U.S. 161, 164-166, 97 S.Ct. 2221, 53 L.Ed.2d 187

(1977). We see no constitutional difference between the meaning of the term "offense" in the contexts of double jeopardy and of the right to counsel. Accordingly, we hold that when the Sixth Amendment right to counsel attaches, it does encompass offenses that, even if not formally charged, would be considered the same offense under the Blockburger test.

O'Connor, Scalia, Kennedy, and Thomas, JJ., joined.
Kennedy, J., filed a separate written opinion in which he concurred and in which Scalia and Thomas, JJ., joined.
Breyer, J., filed a dissenting opinion, in which Stevens, Souter, and Ginsburg, JJ., joined.

SCHMIDT v. STATE, No. 88AO1-0008-PC-290, ____N.E.2d____(Ind. Ct. App. Apr. 3, 2001).
VAIDIK, J.

Schmidt next maintains that he was denied the right to post bail in an effort to coerce him into pleading guilty. He directs our attention to Indiana Constitution, Article 1, section 17, which provides that "[o]ffenses, other than murder or treason, shall be bailable," to support his proposition that "in Indiana . . . nearly all offenses are subject to release on bail before *hearing* or trial." Appellant's Brief at 16. (emphasis added). While we do not refute that it is a correct statement of the law that nearly all offenses are bailable pending trial, *see Ray v. State*, 679 N.E.2d 1364, 1366 (Ind. Ct. App. 1997), Schmidt misstates the law by asserting that an accused has a right to bail before a hearing.

The Indiana Constitution, while recognizing there exists a right to bail pending trial, is silent regarding when the right to bail attaches. Notably, neither the Indiana Constitution nor Indiana Code section 35-33-7-5 gives an accused the right to immediate bail. Indiana Code section 35-33-7-5(4) does, however, specify that an accused must be informed of the amount and conditions of his bail at the initial hearing. [Footnote omitted.] Therefore, we find that while a judge, in her discretion, may allow bail to be posted immediately after arrest, a right to bail does not vest until the initial hearing.

. . . .

KIRSCH and NAJAM, JJ., concurred.

CIVIL LAW ISSUE

CITY CHAPEL EVANGELICAL FREE INC. v. CITY OF SOUTH BEND, INDIANA, No. 7IS00-0008-CV-501, ___ N.E.2d ___ (Mar. 29, 2001).
DICKSON, J.

In this case, because South Bend seeks to take property the loss of which City Chapel claims will materially burden its rights embodied in the core values of Sections 2, 3, and 4 of Article 1 of the Indiana Constitution, City Chapel is entitled to an opportunity to present this claim.

In City Chapel's challenge to South Bend's otherwise lawful condemnation proceedings instituted pursuant to express statutory authorization, the condemnation procedure will be presumed to be constitutional; City Chapel must clearly overcome that presumption by a contrary showing; and, as the challenging party, City Chapel bears the burden of proof with all doubts to be resolved against it. *See* Boehm v. Town of St. John, 675 N.E.2d 318, 321 (Ind. 1996); State v. Hoovier, 668 N.E.2d 1229, 1232 (Ind. 1996).

City Chapel must establish its contention that the taking of its church building by condemnation, under the circumstances presented in this case, materially burdens its members' right to worship according to the dictates of conscience, the right freely to exercise religious opinions and rights of conscience, or the right to be free from a government preference for a particular religious society or mode of worship. The effect of the taking must constitute a material burden, not merely a permissible qualification, upon the core values of the clauses asserted by City Chapel. Price [v. State], 622 N.E.2d [954 (Ind. 1993)] at 960. Considering only the magnitude of the impairment and excluding any

consideration for the social utility of the proposed condemnation, the taking will constitute a material burden on a core value only "[i]f the right, as impaired, would no longer serve the purpose for which it was designed . . . ." Id. at 960 n.7. Although its constitutional challenge carries a very substantial burden of proof, City Chapel is entitled to an opportunity to present its claim for judicial determination.

. . . .

RUCKER, J., concurred.

SHEPARD, C. J., filed a separate written opinion in which he concurred and dissented, in part, as follows:

> I join in Justice Dickson's opinion insofar as it remands for an evidentiary hearing on City Chapel's claim that its rights under the Indiana Constitution trump the eminent domain power of the City of South Bend (though whether they actually do so is a question for some future day).
>
> . . . I thus conclude that City Chapel loses on its First Amendment claim, though for reasons different from the ones identified by Justices Sullivan and Boehm.

SULLIVAN, J., filed a separate written opinion in which he dissented, in part, as follows:

> City Chapel has failed to assert adequately a right to a hearing under any body of law. Instead, it skips the initial inquiry into the propriety of a hearing and concentrates exclusively on its rights under the free exercise clauses of the Indiana and federal constitutions. [Footnote omitted.]
>
> . . . .
>
> Because I believe that City Chapel has not adequately demonstrated a right to an evidentiary hearing, I believe that my colleagues decide a series of issues that we have not been asked to decide. We should not do so.

BOEHM, J., filed a separate written opinion in which he dissented, in part, as follows:

> I agree with the majority's conclusion that the various provisions of the Indiana Constitution dealing with religion prevent the State from imposing material burdens on the exercise of religious practice. I agree that this protection extends beyond the private devotion vel non of individuals and also includes the public and group activities associated with religious practices. And I agree that City Chapel is an organization whose activities seem to fall well within those protections. Thus, I agree that it follows that the City of South Bend, an arm of government, may not exercise its right of eminent domain in such a way as to materially burden City Chapel's religious activities.
>
> I disagree, however, that City Chapel has presented a claim that raises this issue. . . . There is no claim here that the site has an independent religious significance.

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